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AMENDMENTS TO LB 499

1                   1.       Strike original section 2 and insert the following  
2 new sections:

3                   "Section 1. Section 60-4,132, Reissue Revised Statutes  
4 of Nebraska, is amended to read:

5                   60-4,132. The purposes of sections 60-4,137 to 60-4,172  
6 are to implement the requirements mandated by the Commercial Motor  
7 Vehicle Safety Act of 1986, Public Law 99-570, Title XII, and  
8 federal regulations as they existed on January 1, 2002, and to  
9 reduce or prevent commercial motor vehicle accidents, fatalities,  
10 and injuries by: (1) Permitting drivers to hold only one operator's  
11 license; (2) disqualifying drivers for specified offenses and  
12 serious traffic violations; and (3) strengthening licensing and  
13 testing standards.

14                  Sec. 2. Section 60-4,162, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16                  60-4,162. (1) Each employer shall require prospective  
17 applicants for employment as a driver of a commercial motor vehicle  
18 to provide the information required by section 60-4,161.

19                  (2) An employer shall not knowingly allow, permit, or  
20 authorize a person to operate a commercial motor vehicle in the  
21 United States during any period in which:

22                  (a) The person's commercial driver's license is  
23 suspended, revoked, or canceled by any state;

24                  (b) The person has lost the privilege to drive a

1 commercial motor vehicle in any state;

2 (c) The person has been disqualified from driving a  
3 commercial motor vehicle; or

4 (d) The person has more than one operator's license.

5 (3) No employer may knowingly allow, permit, or authorize  
6 a person to operate a commercial motor vehicle in the United States  
7 in violation of a federal, state, or local law or regulation  
8 pertaining to highway-rail grade crossings.

9 (4) Any employer who violates this section shall, upon  
10 conviction, be guilty of a Class III misdemeanor.

11 Sec. 3. Section 60-4,168, Revised Statutes Supplement,  
12 2001, is amended to read:

13 60-4,168. (1) Except as provided in subsection (2) of  
14 this section, a person shall be disqualified from driving a  
15 commercial motor vehicle for one year:

16 (a) Upon his or her first conviction, after April 1,  
17 1992, in this or any other state for:

18 (i) Driving a commercial motor vehicle while under the  
19 influence of alcohol or a controlled substance;

20 (ii) Leaving the scene of an accident involving a  
21 commercial motor vehicle driven by the person; or

22 (iii) Using a commercial motor vehicle in the commission  
23 of a felony; or

24 (b) Upon a first administrative determination, after  
25 April 1, 1992, that such person while driving a commercial motor  
26 vehicle in this or any other state was requested to submit to a  
27 chemical test or tests of his or her blood, breath, or urine by a

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1 law enforcement officer and refused or had a concentration of  
2 four-hundredths of one gram or more by weight of alcohol per one  
3 hundred milliliters of his or her blood or four-hundredths of one  
4 gram or more by weight of alcohol per two hundred ten liters of his  
5 or her breath.

6 (2) If any of the offenses described in this section  
7 occurred while the person was transporting hazardous material in a  
8 commercial motor vehicle which required placarding pursuant to  
9 section 75-364, the person shall, upon conviction or administrative  
10 determination, be disqualified from driving a commercial motor  
11 vehicle for three years.

12 (3) A person shall be disqualified from driving a  
13 commercial motor vehicle for life if, after April 1, 1992, he or  
14 she is convicted of or administratively determined to have  
15 committed a second or subsequent violation of any of the offenses  
16 described in subsection (1) of this section or any combination of  
17 those offenses arising from two or more separate incidents.

18 (4) A person shall be disqualified from driving a  
19 commercial motor vehicle for a period of not less than sixty days  
20 if he or she is convicted in this or any other state of two serious  
21 traffic violations or not less than one hundred twenty days if he  
22 or she is convicted in this or any other state of three serious  
23 traffic violations, arising from separate incidents occurring  
24 within a three-year period.

25 (5) (a) A person who is convicted of operating a  
26 commercial motor vehicle in violation of a federal, state, or local  
27 law or regulation pertaining to one of the following six offenses

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1 at a highway-rail grade crossing shall be disqualified for the  
2 period of time specified in subdivision (5) (b) of this section:

3 (i) For drivers who are not required to always stop,  
4 failing to slow down and check that the tracks are clear of an  
5 approaching train;

6 (ii) For drivers who are not required to always stop,  
7 failing to stop before reaching the crossing, if the tracks are not  
8 clear;

9 (iii) For drivers who are always required to stop,  
10 failing to stop before driving onto the crossing;

11 (iv) For all drivers, failing to have sufficient space to  
12 drive completely through the crossing without stopping;

13 (v) For all drivers, failing to obey a traffic control  
14 device or the directions of an enforcement official at the  
15 crossing; or

16 (vi) For all drivers, failing to negotiate a crossing  
17 because of insufficient undercarriage clearance.

18 (b) (i) A person shall be disqualified for not less than  
19 sixty days if the person is convicted of a first violation of a  
20 violation described in this subsection.

21 (ii) A person shall be disqualified for not less than one  
22 hundred twenty days if, during any three-year period, the person is  
23 convicted of a second violation described in this subsection in  
24 separate incidents.

25 (iii) A person shall be disqualified for not less than  
26 one year if, during any three-year period, the person is convicted  
27 of a third or subsequent violation described in this subsection in

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1 separate incidents.

2           (6) For purposes of this section, conviction shall mean  
3 an adjudication of guilt in a court of original jurisdiction, an  
4 unvacated forfeiture of bail or collateral deposited to secure the  
5 person's appearance in court, a plea of guilty or nolo contendere  
6 accepted by the court, a payment of a fine or court costs, or a  
7 violation of a condition of release without bail, regardless of  
8 whether the penalty is rebated, suspended, or probated.

9           ~~(6)~~ (7) For purposes of this section, serious traffic  
10 violation shall mean:

11           (a) Speeding at or in excess of fifteen miles per hour  
12 over the legally posted speed limit;

13           (b) Willful reckless driving as described in section  
14 60-6,214 or reckless driving as described in section 60-6,213;

15           (c) Improper lane change as described in section  
16 60-6,139;

17           (d) Following the vehicle ahead too closely as described  
18 in section 60-6,140; and

19           (e) A violation of any law or ordinance related to motor  
20 vehicle traffic control, other than parking violations or  
21 overweight or vehicle defect violations, arising in connection with  
22 an accident or collision resulting in death to any person.

23           Sec. 5. Section 75-363, Revised Statutes Supplement,  
24 2001, is amended to read:

25           75-363. (1) The parts of the federal Motor Carrier  
26 Safety Regulations, 49 C.F.R., as modified in this section and any  
27 other parts referred to by such parts, in existence and effective

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1 as of January 1, ~~2001~~ 2002, are adopted as Nebraska law. Except as  
2 otherwise provided in this section, the regulations shall be  
3 applicable to all carriers, drivers, and vehicles to which the  
4 federal regulations apply, to all vehicles of intrastate motor  
5 carriers with a gross vehicle weight rating, gross combination  
6 weight rating, gross vehicle weight, or gross combination weight  
7 over ten thousand pounds, to all vehicles of intrastate motor  
8 carriers designed or used to transport more than eight passengers,  
9 including the driver, for compensation, or designed or used to  
10 transport more than fifteen passengers, including the driver, and  
11 not used to transport passengers for compensation, to all  
12 intrastate motor carriers in the operation of vehicles with a gross  
13 vehicle weight rating, gross combination weight rating, gross  
14 vehicle weight, or gross combination weight over ten thousand  
15 pounds, to all intrastate motor carriers in the operation of  
16 vehicles designed or used to transport more than eight passengers,  
17 including the driver, for compensation, or designed or used to  
18 transport more than fifteen passengers, including the driver, and  
19 not used to transport passengers for compensation, and to all  
20 drivers of such vehicles if the drivers are operating a commercial  
21 motor vehicle as defined in section 60-465 which requires a  
22 commercial driver's license. The Legislature hereby adopts, as  
23 modified in this section:

24 (a) Part 382 -- Controlled Substances And Alcohol Use And  
25 Testing;

26 (b) Part 385 -- Safety Fitness Procedures;

27 (c) Part 390 -- Federal Motor Carrier Safety Regulations;

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1 + General;

2 (d) Part 391 -- Qualifications Of Drivers;

3 (e) Part 392 -- Driving Of Commercial Motor Vehicles;

4 (f) Part 393 -- Parts And Accessories Necessary For Safe  
5 ~~Operations~~ Operation;

6 (g) Part 395 -- Hours Of Service Of Drivers;

7 (h) Part 396 -- Inspection, Repair, And Maintenance;

8 (i) Part 397 -- Transportation Of Hazardous Materials;  
9 Driving And Parking Rules; and

10 (j) Part 398 -- Transportation Of Migrant Workers.

11 (2) The provisions of subpart E, Physical Qualifications  
12 And Examinations, of 49 C.F.R. part 391, Qualifications Of Drivers,  
13 shall not apply to any driver subject to this section who: (a)  
14 Operates a commercial motor vehicle exclusively in intrastate  
15 commerce; and (b) holds, or has held, a commercial driver's license  
16 issued by this state prior to July 30, 1996.

17 (3) The regulations adopted in subsection (1) of this  
18 section shall not apply to farm trucks registered pursuant to  
19 section 60-330 with a gross weight of sixteen tons or less or to  
20 fertilizer and agricultural chemical application and distribution  
21 equipment transported in units with a capacity of three thousand  
22 five hundred gallons or less if the equipment is not required to be  
23 placarded pursuant to section 75-364. The following parts and  
24 sections of the federal Motor Carrier Safety Regulations shall not  
25 apply to drivers of farm trucks registered pursuant to section  
26 60-330 and operated solely in intrastate commerce:

27 (a) All of part 391;

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1 (b) Section 395.8 of part 395; and

2 (c) Section 396.11 of part 396.

3 (4) For purposes of this section, intrastate motor  
4 carriers shall not include any motor carrier or driver excepted  
5 from the federal Motor Carrier Safety Regulations by section  
6 390.3(f) of part 390 or any nonprofit entity, operating solely in  
7 intrastate commerce, organized for the purpose of furnishing  
8 electric service.

9 (5) Part 395 -- Hours Of Service Of Drivers shall apply  
10 to motor carriers and drivers who engage in intrastate commerce as  
11 defined in section 75-302, except that no motor carrier who engages  
12 in intrastate commerce shall permit or require any driver used by  
13 it to drive nor shall any driver drive:

14 (a) More than twelve hours following eight consecutive  
15 hours off duty; or

16 (b) For any period after having been on duty sixteen  
17 hours following eight consecutive hours off duty.

18 No motor carrier who engages in intrastate commerce shall  
19 permit or require a driver of a commercial motor vehicle,  
20 regardless of the number of motor carriers using the driver's  
21 services, to drive, nor shall any driver of a commercial motor  
22 vehicle drive, for any period after:

23 (i) Having been on duty seventy hours in any seven  
24 consecutive days if the employing motor carrier does not operate  
25 every day of the week; or

26 (ii) Having been on duty eighty hours in any period of  
27 eight consecutive days if the employing motor carrier operates



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1 motor vehicles every day of the week.

2 (6) Part 395 -- Hours Of Service Of Drivers, as adopted  
3 in subsections (1) and (5) of this section relating to maximum  
4 driving and on-duty time for drivers, shall not apply to drivers  
5 transporting agricultural commodities or farm supplies for  
6 agricultural purposes when the transportation of such commodities  
7 or supplies occurs within a one-hundred-air-mile radius of the  
8 source of the commodities or the distribution point for the  
9 supplies when such transportation occurs during the period  
10 beginning on February 15 up to and including December 15 of each  
11 calendar year.

12 (7) Section 390.21 of part 390 -- Federal Motor Carrier  
13 Safety Regulations: General, 49 C.F.R. 390.21 -- Marking ~~Of~~  
14 ~~Commercial Motor Vehicles~~ of commercial motor vehicles, shall not  
15 apply to farm trucks and farm truck-tractors registered pursuant to  
16 section 60-330 and operated solely in intrastate commerce.

17 Sec. 6. Section 75-364, Revised Statutes Supplement,  
18 2001, is amended to read:

19 75-364. (1) The parts of the federal Hazardous Material  
20 Regulations, 49 C.F.R., listed below or any other parts referred to  
21 by such parts, in existence and effective as of January 1, ~~2001~~  
22 2002, are adopted as part of Nebraska law and, except as provided  
23 in subsections (2) and (3) of this section, shall be applicable to  
24 all private, common, and contract motor vehicle carriers, drivers  
25 of such carriers, and vehicles of such carriers whether engaged in  
26 interstate or intrastate commerce:

27 (a) Part 171 -- General Information, Regulations, And

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1 Definitions;

2 (b) Part 172 -- Hazardous Materials Table, Special  
3 Provisions, Hazardous Materials Communications, Emergency Response  
4 Information, and Training Requirements;

5 (c) Part 173 -- Shippers--General Requirements For  
6 Shipments And Packagings;

7 (d) Part 177 -- Carriage By Public Highway;

8 (e) Part 178 -- Specifications For Packagings; and

9 (f) Part 180 -- Continuing Qualification And Maintenance  
10 Of Packagings.

11 (2) Agricultural operations exceptions:

12 (a) The transportation of an agricultural product other  
13 than a Class 2 material (Compressed Gases), over roads, other than  
14 the National System of Interstate and Defense Highways, between  
15 fields of the same farm, is excepted from subsection (1) of this  
16 section when:

17 (i) The agricultural product is transported by a farmer  
18 who is an intrastate private motor carrier; and

19 (ii) The movement of the agricultural product conforms to  
20 all other laws in effect on or before July 1, 1998, and 49 C.F.R.  
21 173.24, 173.24a, and 173.24b;

22 (b) The transportation of an agricultural product to or  
23 from a farm, within one hundred fifty miles of the farm, is  
24 excepted from the requirements in 49 C.F.R. part 172, subparts G  
25 (emergency response information) and H ~~(training requirements)~~  
26 (training) when:

27 (i) The agricultural product is transported by a farmer

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1 who is an intrastate private motor carrier;

2 (ii) The total amount of agricultural product being  
3 transported on a single vehicle does not exceed:

4 (A) Sixteen thousand ninety-four pounds of ammonium  
5 nitrate fertilizer properly classed as Division 5.1, PGIII, in a  
6 bulk packaging; or

7 (B) Five hundred two gallons for liquids or gases, or  
8 five thousand seventy pounds for solids, of any other agricultural  
9 product;

10 (iii) The packaging conforms to the requirements of state  
11 law and is specifically authorized for transportation of the  
12 agricultural product by state law and such state law has been in  
13 effect on or before July 1, 1998; and

14 (iv) (A) Each person having any responsibility for  
15 transporting the agricultural product or preparing the agricultural  
16 product for shipment has been instructed in the applicable  
17 requirements of 49 C.F.R. adopted in this section; and

18 (B) Instruction by the Department of Agriculture required  
19 pursuant to the Pesticide Act shall be sufficient for instruction  
20 under subdivision (2) (b) (iv) (A) of this section, if it has been  
21 approved for that purpose by the carrier enforcement division of  
22 the Nebraska State Patrol; and

23 (c) Formulated liquid agricultural products in  
24 specification packagings of fifty-eight-gallon capacity or less,  
25 with closures manifolded to a closed mixing system and equipped  
26 with positive dry disconnect devices, may be transported by a  
27 private motor carrier between a final distribution point and an

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1 ultimate point of application or for loading aboard an airplane for  
2 aerial application.

3 (3) Exceptions for nonspecification packagings used in  
4 intrastate transportation:

5 (a) Nonspecification bulk packagings: Notwithstanding  
6 requirements for specification packagings in 49 C.F.R. part 173,  
7 subpart F, and 49 C.F.R. parts 178 and 180, of the hazardous  
8 material regulations, a nonspecification bulk packaging may be used  
9 for transportation of a hazardous material by an intrastate motor  
10 carrier until July 1, 2000, in accordance with subdivision (d) of  
11 this subsection;

12 (b) Nonspecification cargo tanks for petroleum products:  
13 Notwithstanding requirements for specification packagings in 49  
14 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a  
15 nonspecification metal tank permanently secured to a transport  
16 vehicle and protected against leakage or damage in the event of a  
17 turnover, having a capacity of less than three thousand five  
18 hundred gallons, may be used by an intrastate motor carrier for  
19 transportation of a flammable liquid petroleum product in  
20 accordance with subdivision (d) of this subsection;

21 (c) Permanently secured nonbulk tanks for petroleum  
22 products: Notwithstanding requirements for specification  
23 packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts  
24 178 and 180, a nonspecification metal tank permanently secured to a  
25 transport vehicle and protected against leakage or damage in the  
26 event of a turnover, having a capacity of less than one hundred  
27 nineteen gallons, may be used by an intrastate motor carrier for

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1 transportation of a flammable liquid petroleum product in  
2 accordance with subdivision (d) of this subsection; and

3 (d) Additional requirements: A packaging used pursuant to  
4 subdivision (a), (b), or (c) of this subsection must:

5 (i) Be operated by an intrastate motor carrier and in use  
6 as a packaging for hazardous material before July 1, 1998;

7 (ii) Be operated in conformance with the requirements of  
8 the State of Nebraska;

9 (iii) Be specifically authorized by state law in effect  
10 before July 1, 1998, for use as a packaging for the hazardous  
11 material being transported and by 49 C.F.R. 173.24, 173.24a, and  
12 173.24b;

13 (iv) Be offered for transportation and transported in  
14 conformance with all other applicable requirements of the hazardous  
15 material regulations;

16 (v) Not be used to transport a flammable cryogenic  
17 liquid, hazardous substance, hazardous waste, or marine pollutant;  
18 and

19 (vi) On and after July 1, 2000, for a tank authorized  
20 under subdivision (b) or (c) of this subsection, conform to all  
21 requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g)  
22 of the hazardous material regulations, in the same manner as  
23 required for a United States Department of Transportation  
24 specification MC306 cargo tank motor vehicle.

25 (4) For purposes of this section:

26 (a) Agricultural product means a hazardous material,  
27 other than a hazardous waste, whose end use directly supports the

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1 production of an agricultural commodity, including, but not limited  
2 to, a fertilizer, pesticide, soil amendment, or fuel. An  
3 agricultural product is limited to a material in Class 3 (Flammable  
4 Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous),  
5 Division 2.1 (Flammable Gas), Class 2.2 (Nonflammable Gas), Class  
6 5.1 (Oxidizers), or Class 6.1 (Poisons), or an ORM-D material  
7 (Consumer Commodity);

8 (b) Bulk package means a packaging, including a transport  
9 vehicle or freight container, in which hazardous materials are  
10 loaded with no other intermediate form of containment and which  
11 has:

12 (i) A maximum capacity greater than one hundred nineteen  
13 gallons as a receptacle for a liquid;

14 (ii) A maximum net mass greater than eight hundred  
15 eighty-two pounds and a maximum capacity greater than one hundred  
16 nineteen gallons as a receptacle for a solid; or

17 (iii) A water capacity greater than one thousand pounds  
18 as a receptacle for a gas as defined in 49 C.F.R. 173.315;

19 (c) Farmer means a person engaged in the production or  
20 raising of crops, poultry, or livestock; and

21 (d) Private motor carrier means a person or persons  
22 engaged in the transportation of persons or product while in  
23 commerce, but not for hire.

24 Sec. 7. Section 75-369.03, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 75-369.03. The Superintendent of Law Enforcement and  
27 Public Safety may issue an order imposing a civil penalty against

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1 an interstate motor carrier for a violation of sections 75-348 to  
2 75-358 or against an intrastate motor carrier for violation of  
3 section 75-363 or 75-364 based upon an inspection conducted  
4 pursuant to section 75-366 in an amount which shall not exceed five  
5 hundred dollars for any single violation in any proceeding or  
6 series of related proceedings against any person, motor carrier,  
7 common carrier, contract carrier, exempt carrier, or private  
8 carrier as defined in 49 C.F.R. part 390.5 of the federal Motor  
9 Carrier Safety Regulations as adopted in section 75-363. The  
10 superintendent shall issue an order imposing a civil penalty in an  
11 amount not to exceed ten thousand dollars against an interstate  
12 motor carrier for a violation of subsection (3) of section 60-4,162  
13 based upon a conviction of such a violation. Upon the discovery of  
14 any violation by an interstate motor carrier of section 75-307,  
15 75-352, 75-363, or 75-364 based upon an inspection conducted  
16 pursuant to section 75-366, the superintendent shall immediately  
17 refer such violation to the appropriate federal agency for  
18 disposition, and upon the discovery of any violation by an  
19 intrastate motor carrier of section 75-307 based upon such  
20 inspection, the superintendent shall refer such violation to the  
21 Public Service Commission for disposition.

22           Sec. 8. Original sections 60-4,132, 60-4,162, 60-1306,  
23 and 75-369.03, Reissue Revised Statutes of Nebraska, and sections  
24 60-4,168, 75-363, and 75-364, Revised Statutes Supplement, 2001,  
25 are repealed.".

26           2. Renumber the remaining sections accordingly.